

HOUSE BILL NO. 254

INTRODUCED BY B. DAVIES, ADAMS, FISHER, HAINES, LEWIS, PATTISON, A. PETERSON, RICE,
WELLS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WRIT OF EXECUTION FOR THE
GARNISHMENT OF WAGES REMAINS IN EFFECT FOR 120 DAYS OR UNTIL THE JUDGMENT FOR WHICH
THE WRIT WAS ISSUED IS PAID; AMENDING SECTIONS ~~25-13-101, 25-13-102, 25-13-402, AND~~
~~25-13-404, AND 25-13-614~~, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 25-13-101, MCA, is amended to read:~~

~~"25-13-101. Time limit for issuing execution. (1) Except as provided in 25-13-614 and subsection
(2) of this section, the party in whose favor the judgment is given may, at any time within 6 years after
the entry of the judgment, have a writ of execution issued for its enforcement.~~

~~(2) When the judgment is for the payment of child support, the party in whose favor the judgment
is given may, at any time within 10 years after the termination of the support obligation or within 10 years
from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of
execution issued for its enforcement."~~

~~Section 2. Section 25-13-102, MCA, is amended to read:~~

~~"25-13-102. Execution after six years. In Subject to 25-13-614, in all cases, the judgment may
be enforced or carried into execution after the lapse of 6 years from the date of its entry by leave of the
court, upon motion, or by judgment for that purpose founded upon supplemental pleadings."~~

Section 1. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) The sheriff or levying officer shall, SUBJECT TO SUBSECTION (5),
execute the writ against the property of the judgment debtor no later than ~~60~~ 120 days after receipt of
the writ by:

(a) levying on a sufficient amount of property, if there is sufficient property;

(b) collecting or selling the things in action; and

(c) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

~~———— (3) With respect to earnings of a judgment debtor, an employer shall respond to the levy based upon the earnings accrued to the end of the regular pay period in which the levy occurred.~~

~~(4)~~(3) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

~~(5)~~(4) ~~If Subject to 25-13-614(5), if~~ If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the ~~60~~ 120 days until the judgment is satisfied or the writ expires.

(5) (A) A LEVY UPON THE EARNINGS OF A JUDGMENT DEBTOR CONTINUES IN EFFECT FOR 120 DAYS OR UNTIL THE JUDGMENT IS SATISFIED, WHICHEVER OCCURS FIRST. THE LEVY APPLIES TO ALL PAY PERIODS BEGINNING EARNINGS DUE ON OR AFTER THE DATE OF SERVICE THROUGH THE EXPIRATION OF THE WRIT.

(B) THE SHERIFF OR LEVYING OFFICER SHALL CLEARLY MARK THE DATE AND TIME OF SERVICE AND THE EXPIRATION DATE UPON ALL SERVED COPIES OF THE WRIT AND NOTICE.

~~———— (C) THE REQUIREMENTS OF 25-13-211 ARE CONSIDERED SATISFIED BY THE ONE-TIME SERVICE OF THE NOTIFICATION OF SEIZURE UPON THE JUDGMENT DEBTOR DURING THE PERIOD FOR WHICH THE LEVY UPON THE EARNINGS OF A JUDGMENT DEBTOR IS IN EFFECT. THE NOTIFICATION MUST BE SERVED WITHIN 5 DAYS OF RECEIPT OF THE FIRST PAYMENT BY THE SHERIFF OR LEVYING OFFICER. THE 10-DAY HOLDING PERIOD DESCRIBED IN SUBSECTION (3) RUNS FROM THE DATE OF NOTIFICATION OF SEIZURE WITH RESPECT TO THE FIRST PAYMENT AND FROM THE DATE OF THE RECEIPT OF SUBSEQUENT PAYMENTS.~~

~~(D)~~(C) EXCEPT AS PROVIDED IN SUBSECTION (6), MULTIPLE LEVIES SERVED UNDER THIS SUBSECTION (5) HAVE PRIORITY ACCORDING TO THE DATE AND TIME OF SERVICE UPON THE EMPLOYER.

~~(E)(D)~~ THE RETURN OF SERVICE ON A LEVY UPON THE EARNINGS OF A JUDGMENT DEBTOR IS RETURNED IN THE SAME MANNER PROVIDED FOR IN 25-13-404.

(6) NOTHING IN THIS SECTION IS INTENDED TO SUPERSEDE ANY STATE OR FEDERAL LAWS REGARDING PRIORITY THAT MUST BE GIVEN TO CERTAIN LEVIES AND EXECUTIONS."

Section 2. Section 25-13-404, MCA, is amended to read:

"25-13-404. Return of the execution. (1) Except as provided in ~~25-13-614(5) and subsections (2) and 25-13-402(5)~~ AND SUBSECTION (3) of this section, execution may be made returnable to the clerk of the court in which the judgment was rendered, at any time not less than 10 or more than ~~60~~ 120 days after receipt of the recovery by the sheriff or levying officer following imposition of levy, as provided in 25-13-402.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than ~~90~~ 120 days after its receipt by the sheriff ~~or levying officer~~, to the county treasurer of the county in which the writ was issued.

(3) In compliance with the provisions of subsection (1) and in lieu of returning the writ of execution to the clerk of the court, the sheriff may enclose ~~his~~ the return of the writ in an envelope to the officer, agent, or attorney who sent it and deposit it in the post office, prepaying the postage."

~~**Section 5.** Section 25-13-614, MCA, is amended to read:~~

~~**"25-13-614. Earnings of judgment debtor.** (1) Earnings of a judgment debtor that are not subject to garnishment as provided in this section are exempt.~~

~~(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:~~

~~(a) the amount by which his the judgment debtor's disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or~~

~~(b) 25% of his the judgment debtor's disposable earnings for that week.~~

~~(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, that affords substantial due process, and that~~

1 is subject to judicial review.

2 ~~—— (4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any~~
3 ~~workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:~~

4 ~~—— (i) 50% of the judgment debtor's disposable earnings for that week if he the judgment debtor is~~
5 ~~supporting his the judgment debtor's spouse or dependent child, (other than a spouse or child for whom~~
6 ~~the order is issued); or~~

7 ~~—— (ii) 60% of the judgment debtor's disposable earnings for that week if he the judgment debtor is~~
8 ~~not supporting a spouse or dependent child described in subsection (4)(a)(i).~~

9 ~~—— (b) However, the amount stated in subsection (4)(a)(i) may be 55% and the amount stated in~~
10 ~~subsection (4)(a)(ii) may be 65% if such the earnings are being garnished to enforce an order for~~
11 ~~maintenance or support for a period prior to the 12-week period that ends with the beginning of such that~~
12 ~~workweek.~~

13 ~~—— (5) A writ of execution for the garnishment of wages remains in effect until the judgment for~~
14 ~~which the writ was issued is paid.~~

15 ~~—— (5)(6) For the purposes of this section, the definitions of earnings, disposable earnings, and~~
16 ~~garnishment are as set forth in 15 U.S.C. 1672."~~

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18 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2001.

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